

MANDATE

15-1227
Hoffman v. Morel

N.Y.S.D. Case #
10-cv-2730(AJN)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit,
held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of
New York, on the 12th day of April, two thousand sixteen.

PRESENT:

DENNIS JACOBS,
PETER W. HALL,
GERARD E. LYNCH,
Circuit Judges.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: May 03, 2016

Agence France Presse,

Plaintiff-Counter-Defendant,

v.

15-1227

Daniel Morel,

Defendant-Counter-Claimant-
Counter-Defendant-Appellee,

Getty Images, Inc.,

Defendant-Counter-Claimant-
Counter-Defendant,

ABC Inc., CBS Broadcasting Inc.,
Turner Broadcasting System, Inc.,

Defendants-Counter-Defendants,

MANDATE ISSUED ON 05/03/2016

1 Washington Post Company,

2
3 Counter-Claimant-Counter-Defendant,

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5 v.

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7 Barbara Hoffman, Esq., application to enforce charging lien
8 and other requests,

9
10 Applicant-Appellant.
11 _____

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13 **FOR APPLICANT-APPELLANT:**

BARBARA T. HOFFMAN, ESQ.,
pro se, New York, New York.

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16 **FOR APPELLEE MOREL:**

JOSEPH T. BAIO (Emma J. James,
on the brief), Willkie Farr &
Gallagher LLP, New York, New
York.

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21 Appeal from an order of the United States District Court for the Southern District of New
22 York (Nathan, J.).

23 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
24 **DECREED** that the order of the district court is **AFFIRMED**.

25 Appellant Barbara Hoffman, a lawyer appearing pro se, appeals from a district court order
26 awarding her attorney's fees in the amount of \$164,580.70. Hoffman moved pursuant to New
27 York Judiciary Law § 475 ("section 475") to fix the value of her charging lien on an underlying
28 judgment in favor of her former client in quantum meruit. We assume the parties' familiarity
29 with the underlying facts, the procedural history of the case, and the issues on appeal.

30 "We review a district court's award of attorney's fees for abuse of discretion." Cabala v.
31 Crowley, 736 F.3d 226, 229 (2d Cir. 2013); see also Sequa Corp. v. GBJ Corp., 156 F.3d 136, 149
32 (2d Cir. 1998). A district court's factual findings, "including those based on documentary
33 evidence and inferences drawn from other facts," are reviewed for clear error, and may only be

1 reversed when the reviewing court is “‘left with the definite and firm conviction that a mistake has
2 been committed.’” Garcia v. Teitler, 443 F.3d 202, 211 (2d Cir. 2006) (quoting United States v.
3 U.S. Gypsum Co., 333 U.S. 364, 395 (1948)).

4 An attorney who has been discharged without cause has three remedies—a retaining lien, a
5 charging lien, and a plenary action in quantum meruit; these remedies are cumulative, not
6 exclusive. Levy v. Laing, 843 N.Y.S.2d 542, 544 (App. Div. 1st Dep’t 2007) (citing Butler,
7 Fitzgerald & Potter v. Gelmin, 651 N.Y.S.2d 525, 527 (App. Div. 1st Dep’t 1997)); see also
8 Universal Acupuncture Pain Servs., P.C. v. Quadrino & Schwartz, P.C., 370 F.3d 259, 264 n.6 (2d
9 Cir. 2004). Section 475, which “governs attorneys’ charging liens in federal courts sitting in New
10 York,” Itar-Tass Russian News Agency v. Russian Kurier, Inc., 140 F.3d 442, 448 (2d Cir. 1998),
11 provides that, “[f]rom the commencement of an action, . . . the attorney who appears for a party has
12 a lien upon his or her client’s cause of action, . . . which attaches to a verdict, report, determination,
13 decision, award, settlement, judgment or final order in his or her client’s favor, and the proceeds
14 thereof in whatever hands they may come” N.Y. Jud. Law § 475.

15 “A charging lien . . . is equitable in nature, and the overriding criterion for determining the
16 amount of a charging lien is that it be ‘fair.’” Sutton v. N.Y.C. Transit Auth., 462 F.3d 157, 161
17 (2d Cir. 2006) (citations omitted) (quoting Cohen v. Grainger, Tesoriero, & Bell, 622 N.E.2d 288
18 (N.Y. 1993)). When determining a section 475 charging lien on a quantum meruit basis,
19 “[a]mong the factors to be considered . . . are the difficulty of the matter, the nature and extent of
20 the services rendered, the time reasonably expended on those services, the quality of performance
21 by counsel, the qualifications of counsel, the amount at issue, and the results obtained (to the
22 extent known).” Sequa Corp., 156 F.3d at 148.

1 Upon review, we conclude that the district court did not abuse its discretion by reducing
2 Hoffman's requested hourly rate and estimated hours worked to calculate a presumptively
3 reasonable fee. The district court's consideration of the hourly rate referenced in the retainer
4 agreement was reasonable. See Crescent Publ'g Grp., Inc. v. Playboy Enters., 246 F.3d 142, 151
5 (2d Cir. 2001). Furthermore, although there is no bar to Hoffman's reliance on reconstructed
6 records to serve as the basis for compensation, the district court did not abuse its direction by
7 reducing the claimed number of hours reasonably required for the representation in view of the
8 imprecise nature of Hoffman's accounting. See F.H. Krear & Co v. Nineteen Named Trustees,
9 810 F.2d 1250, 1265 (2d Cir. 1987) ("[T]he burden is on counsel to keep and present records from
10 which the court may determine the nature of the work done, the need for it, and the amount of time
11 reasonably required; where adequate contemporaneous records have not been kept, the court
12 should not award the full amount requested." (citing cases)).

13 "The award of [prejudgment] interest is generally within the discretion of the district court
14 and will not be overturned on appeal absent an abuse of that discretion," except where such interest
15 is awarded "as a matter of right" under New York law. New England Ins. Co. v. Healthcare
16 Underwriters Mut. Ins. Co., 352 F.3d 599, 603 (2d Cir. 2003). Section 5001(a) of the New York
17 Civil Practice Law and Rules provides that prejudgment interest is mandatory except "in an action
18 of an equitable nature." N.Y. C.P.L.R. 5001(a). New York case law holds that prejudgment
19 interest is mandatory with respect to a quantum meruit *cause of action*, see, e.g., Tesser v. Allboro
20 Equip. Co., 904 N.Y.S.2d 701, 705 (App. Div. 2d Dep't 2010); Ogletree, Deakins, Nash, Smoak &
21 Stewart, P.C. v. Albany Steel, Inc., 663 N.Y.S.2d 313, 315 (App. Div. 3d Dep't 1997),¹ which is a
22 claim sounding in quasi-contract, Hudson View II Assocs. v. Gooden, 644 N.Y.S.2d 512, 516

¹ But see Precision Founds. v. Ives, 772 N.Y.S.2d 116, 120 (App. Div. 3d Dep't 2004) (asserting, without analysis, that prejudgment interest is discretionary on quantum meruit claims).

(App. Div. 1st Dep't 1996). However, a section 475 charging lien is "equitable in nature."
Sutton, 462 F.3d at 161.

Hoffman did not bring a plenary action in quantum meruit; and she cites no authority suggesting that the use of quantum meruit to set the amount of her charging lien affects its equitable nature, or that prejudgment interest is mandatory on such a claim. Therefore, Hoffman can neither demonstrate that prejudgment interest must be awarded "as a matter of right" nor that the district court abused its discretion by not awarding interest.

We have considered all of Hoffman's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the order of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A handwritten signature in black ink, reading "Catherine O'Hagan Wolfe". The signature is written over a circular official seal of the United States Court of Appeals, Second Circuit. The seal is blue and white with the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around the perimeter.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

A handwritten signature in black ink, reading "Catherine O'Hagan Wolfe". The signature is written over a circular official seal of the United States Court of Appeals, Second Circuit. The seal is blue and white with the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around the perimeter.